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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GRADY HARRIS,
Plaintiff,
v.
JEFF MACOMBER, et al.,
Defendants.

No. 2:16-cv-0830 TLN DB P

ORDER

Plaintiff is a state inmate proceeding pro se with an action pursuant to 42 U.S.C. § 1983. Plaintiff claims that defendants violated his Eighth and First Amendment rights. Presently before the court is plaintiff’s motion to compel. (ECF No. 117.) For the reasons set forth below, the court will deny the motion to compel as untimely.

I. Background

This action was initially proceeding on plaintiff’s First Amended Complaint against defendant correctional officers Rose, Munoz, Fong, Williamson, Calderon, Thompson, Cervantes, Fuller, and Leavitt. On June 8, 2020, the District Judge assigned to this action granted in part and denied in part defendant Leavitt’s motion to dismiss. (ECF No. 86.) Plaintiff was given leave to file an amended complaint. After plaintiff filed the Second Amended Complaint (SAC), the court issued an amended discovery and scheduling order. (ECF No. 113.)

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1 The August 5, 2021, amended Discovery and Scheduling Order (“DSO”) stated that
2 discovery was reopened only as to defendant Leavitt. (Id. at 5 ¶ 6.) The DSO further stated that
3 the parties could conduct discovery as to defendant Leavitt until October 8, 2021, and any
4 motions necessary to compel discovery shall be filed by that date. The order specified that
5 discovery requests were to be served thirty days prior to the October 8, 2021, discovery deadline.
6 (Id.)

7 Plaintiff filed the instant motion to compel on January 28, 2022.¹ (ECF No. 117.)
8 Defendant Leavitt has filed an opposition. (ECF No. 124.)

9 **II. Plaintiff’s Motion**

10 Plaintiff seeks an order compelling the defendants to answer interrogatories and produce
11 documents. (ECF No. 117.) Plaintiff states he submitted interrogatories along with a set of
12 requests for admission “around November 18, September 21, 2021, and January 19, 2022,” but
13 the “answers were not efficient.” (Id. at 1.) Plaintiff has not indicated why he feels the responses
14 should be supplemented.

15 Plaintiff requests an order pursuant to Rule 37(a) compelling defendant J. Macomber and
16 or California Department of Corrections and Rehabilitation to produce documents attached to the
17 motion. Plaintiff states he submitted a request for these documents “on or around the same dates
18 stated above,” but did not receive an answer. (Id. at 2.) He also seeks \$5,000.00 as reasonable
19 expenses in obtaining this order. Plaintiff has attached a copy of his requests as exhibits to the
20 motion. (Id. at 4-18.)

21 **III. Defendant Leavitt’s Opposition**

22 In the opposition, Leavitt argues the motion is untimely and the responses to plaintiff’s
23 requests for admission were appropriate. (ECF No. 124 at 2.) In a declaration attached to the
24 opposition, counsel for Leavitt states that he sent responses to plaintiff’s requests for admission,
25 set one and requests for production, set one with mailing dates of September 18 and 26. (ECF No.
26

27 ¹ Pursuant to the prison mailbox rule, a document is deemed served on the date a prisoner signs
28 the document and gives it to prison officials for mailing. See Houston v. Lack, 487 U.S. 266, 276
(1988).

1 124-1 at 1.) Counsel further states he received correspondence from plaintiff dated December 6,
2 2021, regarding responses to request for admission, set one and the lack of responses to
3 interrogatories. (Id. at 1-2.) Counsel sent a letter to plaintiff addressing the dispute and
4 informing plaintiff he did not receive the interrogatories referenced in plaintiff’s letter. (Id. at 10-
5 11.)

6 Thereafter, counsel received a set of interrogatories directed toward each of the individual
7 defendants dated November 18, 2021. (Id. at 2.) Counsel received another set of interrogatories
8 on January 24, 2022. (Id.) Counsel states these items were sent after the discovery cutoff set by
9 the DSO.

10 **IV. Legal Standards**

11 Under Rule 26 of the Federal Rules of Civil Procedure, “[p]arties may obtain discovery
12 regarding any non-privileged matter that is relevant to any party’s claim or defense and
13 proportional to the needs of the case, considering the importance of the issues at stake in the
14 action, the amount in controversy, the parties’ relative access to relevant information, the parties’
15 resources, the importance of the discovery in resolving the issues, and whether the burden or
16 expense of the proposed discovery outweighs its likely benefit. Information within the scope of
17 discovery need not be admissible in evidence to be discoverable.” Fed. R. Civ. P. 26(b)(1).

18 In response to a request for production of documents under Rule 34, a party is to produce
19 all relevant documents in its “possession, custody, or control.” Fed. R. Civ. P. 34(a)(1). The
20 purpose of discovery is to “remove surprise from trial preparation so the parties can obtain
21 evidence necessary to evaluate and resolve their dispute.” United States v. Chapman Univ., 245
22 F.R.D. 646, 648 (C.D. Cal. 2007) (quotation and citation omitted).

23 Under Rule 37 of the Federal Rules of Civil Procedure, “a party seeking discovery may
24 move for an order compelling an answer, designation, production, or inspection.” Fed. R. Civ. P.
25 37(a)(3)(B). The court may order a party to provide further responses to an “evasive or
26 incomplete disclosure, answer, or response.” Fed. R. Civ. P. 37(a)(4). “District courts have
27 ‘broad discretion to manage discovery and to control the course of litigation under Federal Rule

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1 of Civil Procedure 16.” Hunt v. County of Orange, 672 F.3d 606, 616 (9th Cir. 2012) (quoting
2 Avila v. Willits Env'tl. Remediation Trust, 633 F.3d 828, 833 (9th Cir. 2011)).

3 “The party seeking to compel discovery has the burden of establishing that its request
4 satisfies the relevancy requirement of Rule 26(b)(1). Thereafter, the party opposing discovery has
5 the burden of showing that the discovery should be prohibited, and the burden of clarifying,
6 explaining or supporting its objections.” Bryant v. Ochoa, No. 07cv200 JM (PCL), 2009 WL
7 1390794, at *1 (S.D. Cal. May 14, 2009) (citations omitted). Specifically, the party moving to
8 compel bears the burden of informing the court (1) which discovery requests are the subject of the
9 motion to compel, (2) which of the responses are disputed, (3) why the party believes the
10 response is deficient, (4) why any objections are not justified, and (5) why the information sought
11 through discovery is relevant to the prosecution of this action. McCoy v. Ramirez, No. 1:13-cv-
12 1808-MJS (PC), 2016 WL 3196738, at *1 (E.D. Cal. June 9, 2016); Ellis v. Cambra, No. 1:02

13 **V. Analysis**

14 Plaintiff acknowledges that the disputed discovery requests were served on defendants
15 after the deadline set forth in the DSO. He specifically states that he served requests on
16 September 21, 2021, November 18, 2021, and January 19, 2022. (ECF No. 117 at 1.) The
17 deadline for submitting requests was thirty days prior to October 8, 2021. (ECF No. 113 at 5.)
18 Thus, defendants were not required to respond. See Choyce v. Radasa, No. 2:20-cv-0608 KJN P,
19 2021 WL 2383029, at *2 (E.D. Cal. June 10, 2021) (“Because plaintiff’s discovery requests were
20 untimely propounded, defendant was not required to respond . . .”).

21 Additionally, plaintiff’s motion to compel was filed on January 28, 2022, nearly four
22 months after the deadline for filing such motions. (ECF No. 117 at 2, 19.) Plaintiff has not
23 provided any explanation for the delay and the docket does not indicate that plaintiff sought an
24 extension of time to conduct discovery or file a motion to compel. Accordingly, plaintiff’s
25 motion to compel will be denied as untimely. See Womack v. Windsor, No. 2:15-cv-0533 MCE
26 KJN P, 2017 WL 1155083 at *2 (E.D. Cal. Mar. 27, 2017) (denying motion to compel because
27 both the motion and underlying discovery requests were untimely).

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1 Federal Rule of Civil Procedure 16(b)(4) provides that, “[a] schedule may be modified
2 only for good cause and with the judge’s consent.” Federal Rule of Civil Procedure 16’s “‘good
3 cause’ standard primarily considers the diligence of the party seeking the amendment.” Johnson
4 v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992).

5 The court will not consider any motion to compel unless plaintiff can show good cause for
6 the delay in requesting discovery and in filing the motion to compel. Thomas v. Kuo, No. 1:16-
7 cv-0524 DAD EPG (PC), 2018 WL 4786923 at *3 (E.D. Cal. Oct. 3, 2018) (requiring plaintiff to
8 show good cause for both reopening discovery and for filing an untimely motion to compel). Any
9 renewed motion should explain the cause for the delay and show plaintiff acted diligently.

10 **VI. Conclusion**

11 For the reasons set forth above, IT IS HEREBY ORDERED that plaintiff’s motion to
12 compel (ECF No. 117) is denied as untimely.

13 Dated: April 4, 2022

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DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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